



AN OVERVIEW OF DRUG ABUSE IN INDIA: A STUDY

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INTRODUCTION TO NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

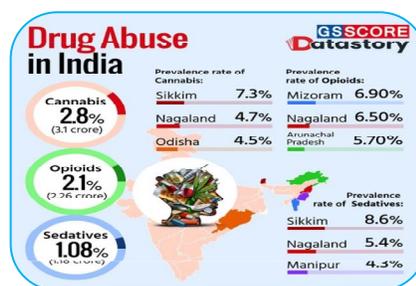
At the very outset one must approach a sensitive topic such as addition to drugs and narcotics in a multi-dimensional way. The discussion must not only include the legal framework within which the drug trade and consumption is criminalised but also the sociological and psychological effects such illicit items have on the individual, their family and society as a whole.

Before delving deeply into the various international conventions and laws that attempt to curb the menace of drug trafficking and the history of use of drugs, one must first understand the term itself. "Drugs" is a term used to describe a substance that when

inhaled, injected, smoked, consumed, absorbed or dissolves under the tongue causes a temporary physiological and often psychological change in the body.¹ But within the context of this project, the term drug is used in a narrower sense, referring to narcotic drugs, these include – coca leaf, cannabis (hemp) opium, poppy straw and includes all manufactured drugs. The narcotic drugs are dangerous substances that are commonly used for recreational purposes.

Recreational drug use is the use of a drug (legal, controlled, or illegal) with the primary intention of altering the state of consciousness through alteration of the central nervous system in order to create positive emotions and feelings. Due to the immediate sense of alleviation and the addictive nature of these substances, there is rampant abuse of such narcotic drugs. A cursory look at the list of items that are included within the term "narcotic drugs" we can observe that these are the substances that are the primary ingredient in various illicitly trafficked drugs consumed by people to get "high". Cocoa leaves are used to make the highly addictive and dangerous cocaine, cannabis is the plant containing the chemical tetrahydrocannabinol (THC) which is what gives it its effects and is often consumed in leaf form –marijuana or as hashish. Opium is used to the make one of the most dangerous drugs of all – heroin, which is often consumed intravenously through an injection wreaking havoc on the body and mind. The term narcotic drugs often cross paths with another term "psychotropic substance", this term is used to refer to chemicals within the drugs that result in the psychological effects, such as THC or Methamphetamine, and other chemicals used in the making of drugs such as Valium, Diazepam and Morphine.

The legality of the drugs is often dependent on its area of production and culture. For example in India cannabis is often consumed as Bhang since time immemorial, in various nations cannabis due to its lack of serious damage to the body has been legalized. It must be noted, however, that the use of narcotic drugs and psychotropic substances for scientific and medicinal purpose is indispensable. Due to the use of narcotic drugs and psychotropic substances for scientific and medicinal purposes, the



¹ Definition of Drug, available at: <https://www.investopedia.com/terms/d/drug.asp>

production of the same cannot be banned altogether, but the production can be controlled and regulated by the government to prevent illicit trafficking and illicit use of the same. The psychotropic substance morphine itself is one of the most useful medicines for pain alleviation while cannabis is medically recommended for chemotherapy patients. But these drugs, like most other drugs have chemicals in them that cause physical addiction that alters the state of mind, it is not just the use of the drug that leads to slow deterioration of the person's body and mind but the abuse of the drug. The nature of the drugs and psychotropic substances are such that they lend themselves to addiction.

Drug addiction has become one of the curses of our times a menace that threatens public health and results in the dissolution of human personality, promoting conditions for various forms of human degradation, consequences of which lead to crime and lawlessness. One of its tragedies lies in its morbid assault on youth resulting more often than not in mental disorientation and emotional derangement, pushing the victim towards a fate from which there is seldom any hope of recovery. The evil is insidious and operates secretly and it often comes to be known to others only after the addict has crossed the point of no return. The consequences are far-reaching, because in attacking the younger generation of a country, it destroys slowly, the nation's future. History provides many example of the wilful subversion of a nation's culture- its social values and its integrity by the systematic corruption of its youth through smuggled drugs. The dangers following illicit traffic in narcotic drugs have been recognised worldwide, and so agitated is the conscience of the world community that they are now the subject of international conventions.

In this paper, we shall explore multiple facets of drug addiction and the crimes related to the same. The subsequent chapters include a detailed analysis of the causes of drug addiction and its effects on the individual, family and society as a whole. Further, the paper discusses various international conventions that India is a signatory to in the interest of curbing the drug menace. Finally, the paper takes a critical look at the Indian laws relating to drug trafficking and response to drug addiction by the State. The paper shall conclude with an analysis of the shortcomings within the legislations of the country and possible solutions to help curb the menace of drug trade and addiction.

OBJECTIVES

- To analyse the cause of drug addiction
- To analyse the effects of drug addiction on the Individual, Family and Society
- To analyse the International Conventions relating to Drug Trade and Drug Addiction
- To critically analyse the laws relating to Drug Abuse in India
- To propose possible solutions to help curb the drug menace

RESEARCH METHODOLOGY

The research methodologies used in this paper are doctrinal in nature The data and the law relating to causes of drug addiction, their effect and the response to it along with the laws related to reducing the manufacture, production, sale and use of narcotic drugs and psychotropic substances has been explained using various manuals, case laws, websites, books, periodicals and statutes. It can also be termed as a qualitative study as it mainly uses facts and data about the different aspect of this topic and relies on multiple disciplines.

DRUG ADDICTION

Drug Addiction (also called substance use disorder) is a brain disorder. The addict becomes dependent on the drug. The addict uses it, despite having full knowledge of its harmful effects on health. It is considered a brain disease because it changes the structure and functioning of the brain. Different facets of addiction include

- An uncontrollable desire or craving to consume the drug.
- Engaging in compulsive behaviour to obtain the drugs.
- Find it impossible to control the drug intake.

- Taking drugs in larger doses than the recommended doses.
- Not being able to discharge his day-to-day responsibilities in an efficient manner.

Sometimes, drug addiction is also referred to as drug dependency since the addict develops dependency or addiction for a particular drug.

CAUSES OF DRUG ADDICTION

Psychological Causes of Drug Addiction

Some of the psychological causes of drug addiction appear to stem from trauma, often when the drug addict is young. Sexual or physical abuse, neglect, or chaos in the home can all lead to psychological stress, which people attempt to "self-medicate" (decrease the stress's pain through drug use). This self-medication becomes a cause of drug addiction.

Other psychological causes of drug addiction include:

- A mental illness such as depression
- Inability to connect with others, lack of friends
- Poor performance at work or school
- Poor stress coping skills

Environmental Causes of Drug Addiction

A person's environment can be part of what causes drug addiction. Drug addiction is more common in environments where drug abuse is seen or where it's seen as permissible. Children who grow up in homes with drug addicts often become drug addicts themselves.

Because most drug use starts in adolescence (teenage drug abuse). Those with inattentive, abusive or neglectful parents are more prone to drug abuse. One cause of drug addiction can be the combination of drug experimentation with the lack of parental oversight.

Other environmental factors that can be causes of drug abuse include:

- Participation in a sport where performance-enhancing drugs are encouraged
- A peer group that uses or promotes drug use
- People of lower socioeconomic status are at greater risk of drug addiction
- Gender and ethnicity contribute to addiction of some drugs

Genetic Causes of Drug Addiction

Drug addiction tends to run in families, indicating genetics may have a role in causing drug addiction. In fact, in studies of twins it appears half of someone's risk of becoming addicted to drugs is genetic. Genetic causes of drug addiction appear to involve multiple gene sequences and science has not yet been able to pinpoint all the genes involved. However, it is known some genes, like those involved in brain receptors of nicotine, contribute to the cause of drug addiction. Thus, in such cases the person has greater propensity to be an addict, if not of drugs then some other addictive act.

Other Causes

While the aforementioned types are certainly the broad causes for drug addiction, there are certain specific reasons for the increase of this dependency on drugs. There include the following –

1. Rapid Industrialization
2. Lack of parental care and control
3. Developments in pharmaceutical sciences and creation of new synthetic drugs
4. Frustration and emotional distress
5. Hippie culture and lax limits of "experimentation"
6. Communication gaps between children and parents
7. Social disorganization

Effects of Drugs on the Individual

Effect on Health

The impact of drug abuse and dependence can be far-reaching, affecting almost every organ in the human body. Drug use can: Weaken the immune system, increasing susceptibility to infections; Cause cardiovascular conditions ranging from abnormal heart rate to heart attacks. Injected drugs can also lead to collapsed veins and infections of the blood vessels and heart valves; Cause nausea, vomiting and abdominal pain; Cause the liver to have to work harder, possibly causing significant damage or liver failure; Cause seizures, stroke and widespread brain damage that can impact all aspects of daily life by causing problems with memory, attention and decision-making, including sustained mental confusion and permanent brain damage; Produce global body changes such as breast development in men, dramatic fluctuations in appetite and increases in body temperature, which may impact a variety of health conditions. The individual may also die in case of an overdose.²

Effects On The Brain

Although initial drug use may be voluntary, drugs have been shown to alter brain chemistry, which interferes with an individual's ability to make decisions and can lead to compulsive craving, seeking and use. This then becomes a substance dependency. All drugs of abuse - nicotine, cocaine, marijuana, and others - effect the brain's "reward" circuit, which is part of the limbic system. Drugs hijack this "reward" system, causing unusually large amounts of dopamine to flood the system. This flood of dopamine is what causes the "high" or euphoria associated with drug abuse.

Such abuse results in various behavioural problems, paranoia, aggressiveness, hallucination, impaired Judgment, impulsiveness and loss of self-control.

Birth Defects

Nearly 4 percent of pregnant women in the United States use illicit drugs such as marijuana, cocaine, Ecstasy and other amphetamines, and heroin. These and other illicit drugs may pose various risks for pregnant women and their babies. Some of these drugs can cause a baby to be born too small or too soon, or to have withdrawal symptoms, birth defects or learning and behavioural problems. Additionally, illicit drugs may be prepared with impurities that may be harmful to a pregnancy.³

Effects of Drugs on the Family

When a family member has a drug or alcohol addiction, they have a disease that has the power to affect and hurt their entire family, including parents, children, brothers, sisters, grandparents, or any family member who is a part of their life. An addiction can cause tension, miscommunication, and more frequent arguments within a household, raising the stress levels and negativity off all who are within this unhealthy atmosphere. The unpredictability of a family member who compulsively takes drugs or drinks alcohol can cause anxiety, emotional pain, stress, and a loss of trust, because that individual often can't be counted on to follow through with what they say. Job instability, late nights, and erratic and abnormal behaviour may all result from an addiction in a way that damages a family's foundation. The addicted individual can get unfocused, forgetful, or distracted, as more often than not, their mind is solely on their addiction.

Due to these things, surrounding family members may have to take on greater responsibilities, causing even more strain and a variety of negative emotions, like blame, resentment, hate, anger, and even fear. As trust continues to falter, family members are on edge as they strive to stay aware of the different lies their addicted family member may create to explain or deny their behaviours. Together, these situations create an altered and damaged family dynamic.

² Effects of Drug Abuse on the body, available at: <https://recoverygateway.org/substance-abuse-resources/drug-addiction-effects/>

³ *Ibid.*

Damaging Family Ties – Naturally, the behavioural issues the addict brings within the household and the negative response to it by the family members is bound to result in the damaging of family ties.

Financial instability — A family member may have to be on guard for theft, as addicted individuals may steal money or valuables to pawn in an attempt to finance their addiction. A person may not be able to fulfil their job responsibilities due the effects of their addiction, to the extent that they lose their job. If this happens, their family may suffer from lack of heat, food, electricity, or even a roof over their heads. In other cases, they may not have money for these essentials, as they spent it on drugs or alcohol.

Isolation — Drugs and alcohol exert a heavy influence on a person's cognitive functioning, judgement, and sense of inhibition, thus the addicted family member may say and/or do things which can greatly embarrass a family, to the extent that they withdraw from family or social activities, causing an extreme sense of isolation. Some family members may also choose to distance themselves from their addicted loved one, due to this embarrassment or an inability to cope with the situation.

Enabling — A hallmark of addiction within a family dynamic, enabling behaviours allow the addicted individual to continue forward in their destructive patterns of abuse, due to the way a family member's actions protect them from the consequences. Many times, the enabler will actually feel as if they're helping the person, when in reality they are perpetuating the addiction by not allowing their loved one to experience the harmful results of their addictive behaviours.

Co-dependency — This dysfunctional relationship is very commonplace within families and heavily linked to patterns of enabling. Oxford Dictionaries defines it as "Excessive emotional or psychological reliance on a partner, typically one with an illness or addiction who requires support." Essentially, the family member without the addiction begins to draw their sense of self-worth by becoming reliant on their role of providing care for their addicted loved one.

The Devastating Impact On Children Within the Family

If a parent or family member has an addiction it greatly impacts children of all ages and they commonly suffer or get hurt in some respect. When a person has an addiction, they may forget to care for the needs of their child, as the pursuit of finding and using more substances or the resulting illness these substances may cause, may detract from their responsibilities. The absence of the parent in the child's life can create problems, as they may no longer be attuned to their child's needs. They may fail to provide basic and necessary care, such as providing or preparing meals, keeping their child clean, or attending to any other important needs such as schoolwork or concerns of social problems.

A child may be forced to care for these essential needs for either themselves or their siblings on their own. These behaviours may be even more prevalent in children of single-parent households, to the extent that "children are likely to behave in a manner that is not age-appropriate to compensate for the parental deficiency." What this essentially means, is that they may create a wall of denial to keep themselves from dealing with the reality of their parent's addiction, by attempting to step up and act as the role of the parent, provider, or caregiver.

Safety is also a huge concern for these children, as an addicted individual may not be focused or aware enough to keep their children from accidents or other adults who may wish their children harm. They may not also be attuned enough to take action and get help, should these events arise. If criminal activities are committed within the child's home, such as dealing drugs, a child experiences the risk of their parent ending up behind bars. In more severe cases, the child may be forced to take part in these criminal acts, in a way that damages their trust, jeopardizes their lives, and causes them to live in an even greater state of fear and instability.

Substance abuse and addiction has been implicated in an increased risk of child abuse. Subsequently, children of abuse have been shown to have greater rates of substance use disorders later in life. Paired with the fact that a child of an addicted individual may already face increased rates of addiction, this detrimental environment may be altering their life for the long term. As the child grows up with these constant fears and problems, their emotional and mental health may be compromised in a way that impacts their schooling, self-confidence, social development, and overall health and wellbeing.

Drug addiction affects the parent-child relationship in other ways as well, these include⁴ -

Negativism — creating a negative atmosphere in the household through harmful ways of communication ie by complaining, condemning, or making other disparaging remarks towards each other.

Parental inconsistency — If a parent or child is addicted, the child can become confused if boundaries are not set, rules are not clearly delineated, and discipline is not enforced, creating a rocky family structure.

Parental denial — When faced with clear indicators of abuse or addiction, a parent may still exhibit patterns of denial, asserting that there is no cause for concern and that their child does not have a problem.

Miscarried expression of anger — A child or a parent who develops strong emotions towards their toxic and emotionally unstable home life may find that they are unable or fearful of demonstrating their deep anger. As they suppress these feelings, they may sometimes turn to drugs or alcohol to deal with their own pent up thoughts or emotions.

Self-medication — This is when a parent or a child further opens the door for drug or alcohol abuse, as they continue to self-medicate in an attempt to deal with the emotions or mental health concerns that may result from this environment.

It can be seen clearly that in the face of addiction, the parent-child dynamic can be drastically and detrimentally altered, calling for a positive intervention that can initiate healing of the strained family unit.

EFFECTS OF DRUGS ON THE SOCIETY

As discussed above, the effect of drugs on the individual and the family is deep and grave. As the family is the central unit of a society, anything that affects the family naturally negatively affects the society. Beyond that however, on a purely public level drug abuse has a direct correlation to crime. It is not only limited to stealing to obtain money to buy drugs but goes to indulging in the sale of drugs and drug related paraphernalia. A significant number of those arrested for serious crimes including murder, robbery and assault were under the influence of illegal drugs. Drug Trafficking which involves the manufacture, production, movement and sale of illicit drugs is a complex web of criminal activity. It not only violates national drug laws and international conventions but also involves several other allied activities such as racketeering, conspiracy, bribery and corruption, tax-evasion, illegal money transactions, violation of import and export laws, crimes of violence and terrorism. A wide range of illegal and criminal activities associated with illegal drug trafficking poses a threat to law enforcement agencies throughout the globe.

The economic impact of drugs is also one that harms the society, beyond just theft, the aforementioned criminal activities complementary to trafficking also harm the economy. The cost of providing for the crime specific needs of the law enforcement and laboratories for forensic analysis and the rehabilitative homes for the addicts are all part of public spending. Drug abuse often leads to other medical issues such as HIV/AIDS, hepatitis and tuberculosis, all having negative impact on the society and may also result in death.

International Conventions on Narcotic Drugs 1912-1953

To control and regulate the supply of opium and other narcotic drugs, the following International Conventions were entered into between 1912-1953:-

- International Opium Convention (Hague, 2.3.1912)
- Agreement concerning the manufacture, international trade and use of prepared opium (Geneva, 13.7.1925)
- Convention for the manufacture and distribution of narcotic drugs (Geneva 13.7.1931) Agreement Re Opium smoking in the Far-East (Bangkok 27.11.1931)

⁴ Impact of Substance Abuse on Families, available at: <https://www.ncbi.nlm.nih.gov/books/NBK64258/>

- Convention for the suppression of illicit traffic in dangerous drugs (Geneva 26.6.1936)
- Protocol amending the 1912, 1925, 1931 and 1936 instruments (take success 11. 12. 1946)
- Protocol extending the 1931 Convention to Synthetic narcotic drugs (Paris, 19.11.1948)
- Protocol Re cultivation of the opium Poppy and production Trade and use of Opium (New York, 23.6.1953)

Single Convention on Narcotic Drugs, 1961

In the second half of 20th century, the white-collar crimes assumed alarming proportions. Under white collar crimes also the 'drug addiction' and the 'illicit traffic in narcotic drugs and psychotropic substances' become such a menace that the dangers following illicit; traffic in narcotic drugs affected the world community and the same became the subject of international conventions. India is a party to the "single convention on Narcotic Drugs, 1961" the preamble of which briefly outlined the importance of effective measures against abuse of narcotic drugs stating that the parties that are concerned with health and welfare of mankind recognize that medical use of narcotics is indispensable and should be made available for such propose, however also noting that addiction constitutes a serious evil for the individual and is fraught with social and economic danger to mankind. It goes on to state that the duty of the parties is to prevent and combat this evil by way of coordinated universal action guided by the same principles and aimed at common objectives.

The Convention provides for Action against illicit traffic and states that while having due regard to the constitutional, legal and administrative systems, the parties shall make arrangements for preventive and repressive action against the illicit traffic and must designate an appropriate agency responsible for such co-ordination. The parties shall also assist each other in campaign against illicit traffic of narcotic drugs and cooperate closely with each other and with competent international organizations against the illicit traffic while ensuring that the cooperation and action be done in an expeditious manner; and ensure that where legal papers are transmitted internationally for the purposes of a prosecution, the transmittal be effected in an expeditious manner to the bodies designated by the Parties.⁵

The Convention also provides for the penal provisions, stating that the parties shall adopt such measures as will ensure- that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, despatch in transmit, transport, importation and exportation of drugs contrary to the provisions of this convention, and any other action which in the opinion of such party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.⁶ The provision goes on to state that the Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration.

The Convention on Psychotropic Substances 1971

Thereafter the Convention of Psychotropic Substances was adopted to which India is a party and the preamble to the said convention lays emphasis on the concern for public health and social problems resulting from the abuse of certain psychotropic substances. It states that the objective of the convention is to prevent and combat, abuse of such substances and the illicit traffic to which it gives rise and use rigorous measures necessary to restrict the use of such substances to legitimate purposes; Believing that effective measures against abuse of such substances require co-ordination and universal action and Recognising that an international convention is necessary to achieve these purposes;

⁵ Article 35, Single Convention on Narcotic Drugs, 1961

⁶ *Id.* at Article 36

Article 20 of this Convention speaks of the Measures against the abuse of Psychotropic Substances that are as follows-

1. The parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, the rehabilitation and social reintegration of the persons involved, and shall co-ordinate their efforts to these ends.
2. The parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of psychotropic substances.
3. The parties shall assist persons whose work so requires to gain an understanding of the problems of abuse of psychotropic substances and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of such substances will become widespread.

The convention also provides for Action against illicit traffic of narcotic drugs⁷ and further provides for penal provisions⁸, both articles read similarly to the 1961 Convention.

The Protocol of 1972 amending the single Convention on narcotic drugs (Geneva, 25.3. 1972)

With the passage of time, it was found that the illicit trafficking and illicit use of narcotic drugs is on the increase at the international level and, therefore, resolutions were adopted by United International Conference to consider the amendment of Single Convention on narcotic drugs 1961, had passed the following resolutions II and III:-

Resolution II comprised of the Assistance in Narcotics Control. In the conference it was established that that assistance to developing countries is concrete manifestation of the will of the international community to honour the commitment contained in the United Nations Charter to promote the social and economic progress of all people and declaring that the Parties to be more effective in their measures against drug abuse must be co-ordinated and universal; and that the fulfilment by the developing countries of their obligations under the Convention will be facilitated by adequate technical and financial assistance from the international community.

Resolution III on the other hand laid emphasis on the Social Conditions and protection against drug addiction. In the conference, the commitment to the preamble of the convention regarding the phrases are "concerned with the health and welfare of mankind" and are "conscious of their duty to prevent and combat" the evil of drug addiction, was reaffirmed. Due consideration was also given to the fact that, while drug addiction leads to personal degradation and social disruption, it happens very often that the deplorable social and economic conditions in which certain individuals and certain groups are living predispose them to drug addiction and recognizing that social factors have a certain and sometimes preponderant influence on the behaviour of individuals and groups. The Resolution proposed the following recommendations - The parties:

- Should bear in mind that drug addiction is often the result of an unwholesome social atmosphere in which those who are most exposed to the danger of drug abuse live;
- Should do everything in their power to combat the spread of the illicit use of drugs;
- Should develop leisure and other activities conducive to the sound physical and psychological health of young people.

Apprehension about the sharp increase in drug problems during the late seventies led to formulation by the General Assembly in 1981 of an International Drug Abuse Control Strategy and a five year action programme (1982-86). It provided for a series of policy measures dealing with various aspects of drug control, traffic and treatment of addicts. The six-point strategy called for, (i) improving the international drug control system through wider adherence to existing treaties; (ii) co-ordinating efforts to ensure balance between supply and demand of drugs for legitimate use; (iii) steps for eradication of illicit drug-traffic including finding income producing alternatives for illicit drug producers; (iv) intensifying efforts to detect and dismantle clandestine laboratories and trafficking organisations; and (v) measures to prevent drug abuse and promote treatment, rehabilitation and

⁷ Article 21, The Convention on Psychotropic Substances 1971

⁸ *Id.* at Article 22

social integration of drug abusers. The programme of action set out specific activities for UN and member governments to achieve these objectives. The Commission on Narcotic Drugs was asked to monitor and co-ordinate their implementation.

The 1984 Declaration on the Control of Drug Trafficking and Drug Abuse viewed drug trafficking and drug abuse as an international criminal activity" a grave threat to the security and development of many countries and peoples which should be combated by all moral, legal and institutional means, at the national, regional and international levels. It identified the eradication of this evil as the collective responsibility of all States and affirmed the willingness of member States to intensify efforts and co-ordinate their strategies in that area.

Further the Commission on Narcotics was called upon in 1984 to begin preparing a new International Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to address areas that seemed to be inadequately covered by existing instruments.

The Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988(Vienna, 20.12.1988)

Finally, the convention against illicit traffic in narcotic drugs and psychotropic substances was held by United Nations in 1988 and preamble to the said convention recalls deep concern on illicit traffic in narcotic drugs and psychotropic substances.

The preamble of this convention emphasises the concern for the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society. The preamble proceeds to discuss the steadily increasing in-roads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances, and particularly by the fact that children are used in many parts of the world as the illicit drug consumers market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity. The preamble recognizes the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States and also that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority; The preamble goes on to state that there are economic consideration to the issue as illicit traffic generates large financial profits and wealth enabling transnational- criminal organizations to penetrate, contaminate a corrupt the structures of government, legitimate commercial and financial business, and society at all its levels; The preamble lays down the intention and determination of the parties to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for doing and to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic. The preamble also recognizes that the ready availability of chemicals has led to an increase in the clandestine manufacture of such drugs and substances;

The preamble provides for the Parties to improve international co-operation in the suppression of illicit traffic by sea and that eradication of illicit traffic is a collective responsibility of all States and that, to that end, coordinated action within the framework of international co-operation is necessary and acknowledging that competence of the United Nations in the field of control of NDPS and psychotropic substance and desirous that international organs concerned with such control should be within the framework of that organization. The preamble reaffirmed the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody and recognized the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, the 1972 protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude and extent of illicit traffic and its grave consequences.

The Directive Principles of State Policy:

The Directive Principles of State Policy enshrined in part IV of the Constitution of India are fundamental in the governance of the country. The Directive Principles can be described as sacred and inalienable as they represent the policies and the programmes which the State should achieve. While the Fundamental Rights impose a duty on the State not to violate them, the Directive Principles of State Policy impose corresponding duty on the State to apply them in making the laws for the welfare of the people. The Directive Principles of the State Policy enshrined in Article 47 of the Constitution of India lays down as under:

"The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health."

National Drugs and Psychotropic Substances Act, 1985

An overview of drug control laws in India

The drug control laws in India can be traced back to the Opium Act of 1857. This was followed by the Opium Act of 1878 and the Dangerous Drugs Act of 1930. These laws were designed to regulate and monitor the use of some specific drugs in limited contexts; they were not based on any well-defined principles and did not contain any overarching provisions to grapple with the problem of drug abuse in a holistic manner. Moreover, they provided for meagre punishments for their contravention which were to the tune of three years imprisonment for the first time offenders and 4 years imprisonment for repeat offenders. In the post-World War II period, countries began working collectively on enacting human rights instruments that were designed to allow individuals to live with dignity and respect. The clearest manifestation of this general principle in the context of health can be found in Article 25 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights which seek to promote the highest attainable standards of physical and mental health. Against this backdrop, several international instruments such as the Single Convention on Narcotic Drugs, 1961 and, more importantly, the Convention on Psychotropic Substances, 1971 unequivocally recognized the need to put in place regulatory regimes and systems to grapple with the problem of drug abuse. In order to bring India's narcotics control law at par with international standards and to effectuate the goals of these treaties, the National Drugs and Psychotropic Substances Act, 1985 was enacted by the Government of India. The Act is widely regarded as a prohibitionist law which seeks to grapple with 2 kinds of offences: trafficking of prohibited substances i.e. cultivation, manufacture, distribution and sale, as well as their consumption.

The NDPS Act, 1985 has been enacted to make stringent provisions for the control and regulation of operations relating to Narcotic Drugs and Psychotropic Substances to provide for deterrent punishment including forfeiture of property. The Central Government is charged with the duty of taking all such measures as it deems necessary or expedient for preventing and combating the abuse of Narcotic Drugs and Psychotropic Substances and the menace of illicit traffic therein.

NDPS Act, 1985 is a "Special Law". As such various provisions incorporated in the Act regulating procedure to be followed for offences under the Act are applicable to the exclusion of Criminal Procedure Code, 1973.

The principal objectives behind enacting the NDPS Act, 1985 were:-

- (1) To provide for stringent punishment for the persons indulging in illicit drug trafficking as the maximum term of imprisonment under previous Acts was for a maximum period of 3 years (4 years in case of repeat offences), and to take advantage of such laxity of law the international drug smugglers started operating from India;
- (2) To broaden the enforcement base by conferring power of investigating of drug related offences also on a member of Central enforcement agencies like customs, central excise, narcotic, revenue, intelligence etc. also;

- (3) To fulfil the international obligations under various international treaties and conventions to which India is a party;
- (4) To bring the new drugs of addiction i.e. psychotropic substances under strict statutory control in the manner as envisaged in the Convention on Psychotropic Substances 1971 which has been acceded to by India in 1975.

Establishment of specialized courts

When the NDPS Act was in its infancy, cases pertaining to the offences delineated in the Act were dealt with by conventional Sessions Courts. However, this further exacerbated the problem of judicial overburden which has plagued Indian courts for decades. In order to remedy this problem, the Government of India vide an amendment to the NDPS Act in 1989 paved the way for the establishment of specialized courts to deal with offences set out in the Act. The act empowers the government to set up as many Special Courts as it deems fit for the expeditious resolution of disputes.⁹ The Special Court consists of a single judge who is appointed with the concurrence of the Chief Justice of the concerned High Court and who must be a sitting Sessions Judge or Additional Sessions Judge at the time of his appointment.¹⁰ A Special Court has the same powers as the Magistrate when cases are forwarded to it. The Special Court is empowered to take cognizance of any offence under the Act on the basis of a report submitted to it by the relevant police authority or any complaint made by officers in the central or state government who are authorized to make such complaints. Even though Special Courts have played a pivotal role in the effective implementation of the NDPS Act, they have not been able to develop efficacious strategies for grappling with the systemic challenges that are faced by courts across the country. For example, even though Mumbai has 8 Special Courts, most cases come up for trial only after 2-3 years.

An overview of key offences and punishments

The quantum of punishment under the NDPS Act is based on the quantity of drugs found which may be classified into 3 categories: small, less than commercial and commercial. As a result, the punishment may be as low as rigorous imprisonment for one year if the drugs found are in small quantity and as high as 20 years imprisonment for a large quantity of drugs. The amount of small and commercial quantity is specified by the Central Government.

The quantity for some common drugs is as follows:

- Amphetamine: small quantity – 2 grams, commercial quantity – 50 grams.
- Cocaine: small quantity – 2 grams, commercial quantity – 100 grams.
- Codeine: small quantity – 10 grams, commercial quantity – 1 kg.
- Ganja: small quantity – 1 kg, commercial quantity – 20 kg
- Heroin: small quantity – 5 grams, commercial quantity – 250 grams.
- Morphine: small quantity – 5 grams, commercial quantity – 250 grams.
- Poppy straw: small quantity – 1 kg, commercial quantity – 50 kg.

The Act explicitly prohibits the cultivation of opium, poppy, coca or cannabis plants as well as the production, manufacture, distribution including warehousing, transport, purchasing and selling of prohibited drugs and psychotropic substances.¹¹ It also prohibits their financing as well as consumption and harboring offenders guilty under the Act. As per Sec. 19, any farmer who cultivates opium in accordance with a license but embezzles it shall be punished with rigorous imprisonment for a term ranging between 10 and 20 years and shall also be liable to pay a fine ranging between Rs. 1 and 2 lakh rupees. The production, manufacture, possession, sale, purchase, transport, import and export among

⁹ Sec. 36, National Drugs and Psychotropic Substances Act, 1985

¹⁰ *Ibid.*

¹¹ *Id.* at Sec. 8

states or use of narcotic drugs and psychotropic substances such as poppy straw, prepared opium, opium poppy, cannabis, etc shall result in:

- (1) In case of small quantity, rigorous imprisonment up to one year with/ without fine up to Rs. 10,000;
- (2) In case the quantity is between small and commercial, rigorous imprisonment up to 10 years and fine up to Rs. 1 lakh; and
- (3) In cases involving commercial quantity, rigorous imprisonment between 10-20 years and fine ranging between Rs. 1 and 2 lakh rupees.

However, if the contravention pertains to ganja, the punishment would be significantly less i.e. rigorous imprisonment for a term which may extend up to 5 years and fine up to Rs. 50,000. In all the aforementioned cases, the court can increase the fine by recording the reasons for the same in the judgment. The term "possession" was dealt with by the Supreme Court in the 2015 landmark case of *Mohanlal v. State of Rajasthan*¹². It was held that the word 'possession' includes two concepts; first, it includes all such actions involving physical control or corpus, and second it includes the element of animus, i.e., mental intention which has reference to the exercise of the said control. This word has importance in the field of drug abuse as while consuming or possessing such drugs; people are unaware of the legal consequences of such acts when brought into the court of Law.

As per Sec. 23, any person who engages in illegal import/ export/ transshipment of narcotic drugs/psychotropic substances shall have to face punishment ranging between rigorous imprisonment for 1 to 20 years and fine ranging between Rs. 10,000 and Rs. 2 lakh based on the quantity of the prohibited substance. Sec. 24 clearly states that any person who engages in external dealings in contravention of the Act shall be punished with rigorous imprisonment ranging between 10-20 years and fine ranging between 1-2 lakh rupees. Any person who knowingly allows his premises to be used for the commission of any offence under the Act shall be punished with rigorous imprisonment ranging between 10-20 years and fine ranging between 1 and 2 lakh rupees. Any person financing illicit traffic or harboring an offender shall also face the same punishment. In case a person consumes a narcotic drug or psychotropic substance; the punishment would vary depending on the substance consumed. If the substance consumed is cocaine, morphine or diacetyl-morphine, then the punishment would be rigorous imprisonment up to 1 year with or without fine up to Rs. 20,000. If the accused consumes any other substance, he would have to face rigorous imprisonment up to six months with or without fine up to Rs. 10,000. The court is empowered to send any person who is imprisoned for consumption of drugs to an appropriate medical centre for seeking necessary treatment. Agencies seizing the drugs are required to destroy them suitably in the prescribed manner. In addition, if the accused is found to have any illegal property, it shall be forfeited to the central government. The proceeds from the sale of such illegally acquired properties shall be pooled into the National Fund for Control of Drug Abuse in order to facilitate the treatment of drug addicts and to promote initiatives for drug control.

Punishment for repeat offences

As drug abuse is often a habitual problem for those who engage in it, the Act imposes a far stricter punishment on repeat offenders. Broadly speaking, the punishment for repeat offences can be up to one and half times the quantum of punishment for the first offence. As a result, the punishment would vary from 1.5 years of rigorous imprisonment to 30 years of rigorous imprisonment depending on the gravity of the offence. Similarly, the quantum of fine for a subsequent conviction would also be up to one and half times the fine for the first offence. One provision pertaining to punishments for second convictions which has been hotly debated pertained to the death penalty embodied in Sec. 31A of the Act. Before the 2014 amendment¹³, the Act provided for a mandatory death sentence if the quantity of drugs involved in an offence committed after the first conviction exceeded a certain threshold. For example, the threshold is 10 kg in case of Opium and 1 kg in case of Morphine and Heroin. However, in a move that was widely hailed by the human rights community, the 2014

¹² CRIMINAL APPEAL NO. 1393 OF 2010

¹³ NDPS (Amendment) Act, 2014

amendment made it abundantly clear that the death penalty can be imposed as a substitute for the other punishments that have been set out in the Act for a repeat offender; its application isn't mandatory.

Procedural safeguards in the NDPS Act

Since the NDPS Act gives extensive powers to law enforcement agencies to clamp down on malpractices connected with drug abuse, it also seeks to put in place adequate safeguards to prevent innocent civilians from being unnecessarily harassed. Any person making an arrest or seizure under the Act is, therefore, required to make an extensive report containing all relevant details which must be sent to his immediate superior. Similarly, Sec. 100 of the CrPC states that any police officer who wishes to search any person who is believed to be concealing something suspicious must do so only in the presence of at least 2 respectable inhabitants of that locality known as *panchas*. Thereafter, a statement containing the details of the search and seizure, with the signature of the *panchas*, must be given to the accused of his perusal. Sec. 55 of the NDPS Act imposes an obligation on the police officer seizing the prohibited substances to keep them in safe custody. They must contain the seal of the officer seizing them as well as the officer-in-charge of the police station. Sec. 50 of the Act gives the accused the right to be searched in the presence of the magistrate or a gazetted officer. This right has been upheld by the Supreme Court in the case of *State of Punjab V. Balbir Singh*¹⁴ where it was held that the police officer must, of necessity, inform the accused about this right. Finally, Sec. 58 imposes strict punishments on people making vexatious or frivolous complaints.

Access to medicinal drugs

Even though the Act carves out exceptions in all relevant places for allowing the use of drugs for scientific or medical purposes, it is dismaying to note that the Act has significantly undermined the ability of healthcare institutions to gain access to essential narcotic drugs for the benefit of their patients. This problem is primarily attributed to the fact that the Act requires these institutions to obtain licenses from a plethora of regulatory agencies that deal with issues related to excise, drug control, health administration, etc. The red-tapes involved in the grant of licenses coupled with their short tenure makes it very difficult for medical institutions to maintain large amounts of drugs that are often the only solution for lessening the pain of terminally ill patients. In order to circumvent this problem, the 2014 amendment seeks to put in place a single window clearance system in accordance with which every hospital which is in need of these drugs would be granted the status of a Recognized Medical Institution (RMI). It seeks to create a special category of drugs called Essential Narcotic Drugs whose use would be largely regulated by the central government. These provisions, it is hoped, will help in streamlining conflicting provisions that grapple with the acquisition of licenses and will go a long way in striking the right balance between 'availability' and 'control'.

Rehabilitation of drug addicts

Another area in which the law has been heavily criticized pertains to the limited importance that it attaches to the health of drug users who require special care and treatment. The law only focuses on reducing the supply of drugs; the argument goes, and not on putting in place a robust framework for reducing their demand which would be a more sustainable solution in the long run. In order to address this concern, the 2014 amendment seeks to strengthen existing provisions pertaining to the establishment and working of centres for the identification and treatment of addicts. The amendment focuses on the management of drug dependents and paves the way for the accreditation of treatment centres by relevant government authorities. Treatment centres need to adopt global best practices and harm reduction techniques in order to deal with this problem in a systematic and holistic manner.

¹⁴ AIR 1994 SC 1872

Agencies responsible for effective administration of the law

The Department of Social Welfare has been declared as the nodal agency that monitors the initiatives undertaken by various organizations, public and private, for spreading greater awareness about the deleterious effects of drug abuse. A central agency, known as the Narcotics Control Bureau, is tasked with the responsibility of overseeing the activities undertaken by various law enforcement agencies and to ensure constant compliance with various international instruments that India has signed. The Ministry of Welfare is responsible for taking appropriate steps to prevent the occurrence of circumstances that result in this menace. More specifically, it is responsible for disseminating information about drug abuse, undertaking drives at the local, state and national level to spread greater awareness and to form a broad coalition of various stakeholders to attack the problem at its root. It is also responsible for providing medical assistance to drug addicts and to put in place systems for identifying drug users at an early stage in order to take corrective measures. Finally, the Ministry of Finance looks into cases grappling with drug trafficking, money laundering and other offences which are closely linked with drug abuse.

Interpretation qua the bail provisions under the NDPS Act:

On the question of grant of bail to the persons accused of the commission of the offences under the Act, in *Narcotic Control Bureau v. Kishan Lal and others*¹⁵, the Supreme Court laid down the following propositions of law:-

"Section 37 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (as amended) starts with non obstante clause stating that notwithstanding anything in the code of criminal procedure, 1973, no person accused of an offence prescribed therein shall be released on bail unless the condition contained therein are satisfied. The NDPS Act is a special enactment and was enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. That being the underlying object and particularly when the provisions of section 37 of NDPS Act are in negative terms limiting the scope of the applicability of the provisions of Cr.P.C regarding bail, it can not be said that High Court's powers to grant bail under section 439 Cr.P.C. are not subject to the limitations mentioned under Section 37 of the NDPS Act".

*Rajnikant Jivanlal Patel and another v. Intelligence Officer Narcotic Control Bureau*¹⁶, New Delhi, the accused, arrested for offences punishable under sections 21, 23 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 were enlarged on bail by the magistrate on the failure of the prosecution to present the challan within the 90 days under the proviso to section 167(2)Cr.P.C. The High Court cancelled the bail order. While upholding the order of the High Court, the Supreme Court observed:

"An order for release on bail under proviso (a) to s. 167(2) may appropriately be termed as an order on default. Indeed, it is a release on bail on the default of the prosecution in filling charge sheet within the prescribed period the right to bail, under sec. 167(2) proviso (a) thereto, is absolute. It is the legislative command and not court discretion. if the investigating agency fails to file charge sheet before the expiry of 90/60 days, as the case may be, the accused in the custody should be released on bail. But at the stage, merit of the case are not to be examined. Not tall. In fact the magistrate has no power to remand the a person beyond the Stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds. The accused cannot, therefore, claim any special right to remain on bail . If the investigation reveals that the accused has committed a serious offence and charge-sheet is filed, the bail granted under proviso (a) to S. 167(2) could be cancelled."

¹⁵ AIR 1991 SC 558.

¹⁶ AIR 1990 SC 71

In *State of Punjab v. Balbir Singh*¹⁷, the Supreme Court while examining the steps to be taken by the investigating officer went into the question as to which provisions are mandatory and which are directory and concluded thus. -

"If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of Cr.P.C. and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act." The court continued and stated that under Section 41 (1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc. when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then such search or arrest if carried out would be illegal. Likewise only empowered officer or duly 41 (2) authorised officers as enumerated in Sections and 42(1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.

The court further stated that *"Under Section 42 (1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42 (1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief."* And that *"To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial."*

The court continued *"Under Section 42 (2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42 (1) should forthwith send a copy thereof to his immediate official superior. if there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case. If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of CR.P.C. fails to strictly comply with the provisions of Sections 100 and 165 CR.P.C.including the requirement to record reasons, such failure would,only amount to an irregularity and if an empowered officer or an authorised officer under Section 41 (2) of the Act carries out a search, he would be doing so under the provisions of CR.P.C. 100 and 165 namely Sections CR.P.C. and if there is no strict compliance with the provisions of CR.P.C. then such search would not per se be illegal and would not vitiate the trial."*

The effect of such failure was emphasised by the Hon'ble court stating that it has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act, 1988).

In recent years, India has been facing a problem of transit traffic in illicit drugs. The spillover from such traffic has caused problems of abuse and addiction. This trend has created an illicit demand for drugs within the country which may result in the increase of illicit cultivation and manufacturing of

¹⁷ Supra note 14

drugs. Although a number of legislative, administrative and other preventive measures, including the deterrent penal provisions in the NDPS Act 1985, have been taken by the Government, the transit traffic in illicit drugs had not been completely eliminated. It was, therefore, felt that a preventive detention law should be enacted with a view to effectively immobilizing the traffickers. The conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 provides for preventive detention in relation to smuggling of drugs and psychotropic substances, but it cannot be invoked to deal with persons engaged in illicit traffic of drugs and psychotropic substances within the country. It was, therefore, felt that a separate legislation should be enacted for preventive detention of persons engaged in any kind of illicit traffic in narcotic drugs and psychotropic substances. Accordingly, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 was promulgated by the President of India and ultimately, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 was passed by the Parliament which deemed to have come into force on 4th day of July, 1988 containing only sixteen sections

This Act provides for detention of not only those dealing in narcotic drugs or psychotropic substances but also those handing or letting any premises for the carrying on of any of the activities. The various activities covered under the Act for the purpose of preventive detention are wide covering inter-alia, cultivation of coca plant, opium poppy or any cannabis plant, engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-state, export inter-state, import into India, export from India or transshipment of narcotic drugs or psychotropic substances. Wide meaning, under section 2(e) has been given to 'illicit traffic' in this Act.

Under Section 3 of the Act, the Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, or any Officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purpose of this section, can make an order for detention of a person with a view to prevent him from engaging in illicit traffic in narcotic drugs and psychotropic substances. The Act, under Section 9 has been made to constitute Advisory Boards by the central and State Governments, whenever necessary for seeking its opinion regarding sufficient cause for the detention of a person.

Major shortcomings of the law

The Act, vide Sec. 35, presupposes the guilt of the accused and puts the onus on the accused to prove that he/she is innocent. It further states that, unless the contrary is proved, it will be believed that the accused intentionally held the illicit drugs that were found in his possession. This is in sharp contrast with the notion that an accused is innocent until proven guilty which is the pillar upon which the edifice of most statutes in India rests. It is widely believed that the Act does not make adequate distinctions between a casual drug user, a hard addict, a petty peddler and a seasoned drug trafficker. Furthermore, it also does not make any meaningful distinctions between hard and soft drugs which is the reason why many drug users resort to hard drugs because, in most cases, the punishment that their use encompasses does not significantly differ from the punishment that is handed down to those who use soft drugs. Reports indicate that many criminal gangs have exploited these shortcomings in the law to the fullest extent possible and have formed a close nexus with law enforcement agencies. It would, therefore, not be incorrect to say that the law has created more problems than it has solved.

The strict nature of the Act has not been able to deter the drug traffickers as intended, the reason for this is the lack of government initiative and the confusion created by the inherent infirmities in the act itself. Some of the infirmities found in the implementation of NDPS Act may be summarised below: -

- Lack of social awareness against offences of illicit trafficking and illicit use of narcotic drugs and psychotropic substances;
- The severe punishment for small quantity under section 27 of the Act if it is not for personal consumption;

- Non establishment of Special Courts for trial of the offences under the NDPS Act by some States in spite of specific directions in section 36 thereof;
- Wild growth of cannabis plant, coca plant, or opium poppy and chances of cultivation of such plants in the guise of wild growth by unscrupulous smugglers;
- The inherent problems in the implementation of mandatory requirements of section 50 Of the NDPS Act to make the search effective and meaningful;
- Frequent changes in officers investigating the offences; and
- Non establishment of the centres for identification, treatment, education and after care of the addicts by the Government.

Despite wide ranging changes made twice in the twenty year old law, it is still as vague and deficient as it was at the time of new enactment. The defects in the law have compounded with each amendment. Emphasis should always be given to draft the law in easy language not only to make it popular amongst common masses but also with a view to eliminate scope of different interpretations of the law by the public, investigating agencies and judiciary. However, the case has not been so.

The Roadmap

These are indeed trying times. With news coming from various states such as Punjab and Delhi about the juvenile drug addiction crisis and videos of children from all across the country expressing their desire to get intoxicated and shirk all responsibilities at an all-time high, the time to act is running out. There needs to be greater social awareness to the dangers of drug consumption and stricter implementation of the laws relating to drug production. The desire to alleviate oneself from pain is understandable and relatable; however, drugs simply provide an illusion of happiness, a false haze of satisfaction. When the ganja smoke clears and the cocaine dust settles, all that we are left with is a broken home, an injured body, cases filed against us and the moral decay of society.

Some suggestions to prevent and deal with the drug menace

1. Evolve an effective control mechanism to check unrestricted production of drugs and sale in open markets
2. Proper implementation of existing laws dealing with drug trafficking
3. Education of the masses about the harmful effects of drug use and addiction
4. Early detection of drug addicts and prompt treatment
5. Establish various support groups and de addiction centres to help addicts manage their disease.

While we must condemn those who push drugs, we must also care for those who, often through no fault of their own, got pulled into drugs, maybe through peer pressure or media or simply their unwillingness to battle a difficult life. These are the victims of drugs though they are often seen as proponents. They require care, attention and rehabilitation and an chance to reintegrate them into society.

All of us must take an active role and observe the behaviour of our friends and family in order to prevent them from falling into the rabbit hole that is the world of drug use. Only through care can we break this cycle of despair, one person at a time.

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